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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,854	01/16/2004	Sreenivas Addagatta	042933/271712	6954
826	7590	04/06/2010		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER WHIPPLE, BRIAN P	
			ART UNIT 2452	PAPER NUMBER
			MAIL DATE 04/06/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,854

Applicant(s)

ADDAGATLA ET AL.

Examiner

BRIAN P. WHIPPLE

Art Unit

2452

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,12,16-22,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,12,16-22,26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 4-7, 12, 16-22, and 26-27 are pending in this application and presented for examination.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 4-7, 12, 16-22, and 26-27 have been considered, but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4, 16, 19, 22, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Gutman et al. (Gutman), U.S. Patent No. 7,366,930 B2.
4. As to claim 1, Gutman discloses a system (Col. 1, ln. 48-55) comprising:
a first host configured to provide for transmission of multiplexed data a first data transfer rate (Col. 4, ln. 64-65);

a second host configured to receive multiplexed data a second data transfer rate (Col. 4, ln. 66-67);

a network through which data is transferred from the first host to the second host having a third data transfer rate (Col. 1, ln. 64 – Col. 2, ln. 6);

a data throttle, wherein the data throttle limits the first data transfer rate to a throttle value that is less than or equal to the least one of the first data transfer rate, the second data transfer rate, and the third data transfer rate, and wherein the second and third data transfer rates are obtained during a communication start-up process from signaling, and wherein at least two of the first, second, and third data transfer rates are different from one another (Col. 3, ln. 46-52; Col. 5, ln. 1-7).

5. As to claims 4, 16, 19, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman as applied to claim 1 above, in view of Official Notice (See MPEP 2144.03).

8. As to claim 12, Gutman discloses the invention substantially as in parent claim 1, but does not explicitly disclose SIP.

Official Notice is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman by using SIP as was well known in the art at the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

9. Claims 5-7, 17-18, 20-21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman as applied to claims 1, 16, 19, and 26 above, in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

10. As to claim 5, Gutman discloses the invention substantially as in parent claim 1 above, but is silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

11. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.
12. As to claim 7, Gutman and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).
13. As to claims 17, 20, and 27, the claims are rejected for similar reasons to claim 6 above.
14. As to claims 18 and 21, the claims are rejected for similar reasons to claim 7 above.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571-272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
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Examiner, Art Unit 2452
3/28/10

/THU NGUYEN/
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